Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Limitations on Commercial Time on Television Broadcast Stations	)	MM Docket No. 93-254
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	)	

COMMENTS OF CBS INC.

CBS Inc. ("CBS") hereby submits its comments in response to the Notice of Inquiry, FCC 93-459, released October 7, 1993 ("Notice"), in which the Commission solicits views "on whether the public interest would be served by establishing limits on the amount of commercial matter broadcast by television stations." (Notice at ¶1)

As the Notice states, the Commission was required by the Cable Television Consumer Protection Act of 1992 ("1992 Cable Act") to revisit the question of whether home shopping stations operate in the public interest and are thus entitled to must-carry status. While CBS has no vested interest in home shopping formats and did not participate in that proceeding, we believe that the Commission's decision to grant such stations must-carry status was clearly

correct.[1] Specifically, we believe that decisions as to whether particular broadcast stations are operating in the public interest should not be decided on the basis of qualitative governmental judgments about favored or disfavored formats, home shopping or otherwise.

Even though the Commission has now acted in the only broadcast commercialization proceeding which was mandated by the 1992 Cable Act, it has decided on its own motion to commence a broader inquiry based on its perception that "congressional debates on the 1992 Cable Act also reflected a more generalized concern with the issue of commercialism in broadcasting." (Notice at ¶6) CBS strongly believes that resurrection of commercial time regulation of advertiser-supported broadcasting is unnecessary and would be anachronistic in the current marketplace environment.

Systematic Commission involvement in commercial time limitations began in 1960, in an era when television broadcasters had essentially no competition from other video distributors for audience or advertising dollars.[2] At that time, the Commission deemed it appropriate to remind

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[1] Report and Order, MM Docket No. 93-8, 8 FCC Rcd 5321 (1993).

[2] Report re En Banc Programming Inquiry, 44 FCC 2303 (1960) ("1960 Programming Statement").

licensees "to avoid abuses with respect to the total amount of time devoted to advertising continuity as well as the frequency with which regular programs are interrupted for advertising messages."[3] For more than 20 years thereafter, broadcasters operated under a succession of policy statements about program-length commercials and application processing guidelines which included commercial time ceilings.[4]

Although the transformation of cable television into a full-fledged competitor to broadcasting began to accelerate in the mid-1970's with the advent of satellite-delivered national cable networks, it was not until 1984 that the Commission decided, as part of a larger television deregulatory proceeding, that the marketplace had evolved sufficiently to justify elimination of its commercial time processing guidelines (which the Commission correctly decided had the practical force of rules). At the same

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[3] 1960 Programming Statement at p. 2313.

[4] The history of commercial time regulation is summarized in the Notice of Proposed Rulemaking in MM Docket No. 83-670 (FCC 83-313, released August 4, 1983) at ¶¶11-16.

time, it abolished its general prohibition against program-length commercials.[5]

Significantly, the Commission found that commercial time regulation was not only unnecessary in light of then-existing marketplace forces[6], but would be counterproductive in light of projected future developments:

> "A significant danger posed by our commercial guideline is that it may impede the ability of commercial television stations to present innovative and detailed commercials. In addition to creating a potential disadvantage to video and non-video services currently in operation, our regulation may also interfere with the natural growth and development of broadcast television as it attempts to compete with future video market entrants."[7]

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[5] Report and Order, MM Docket No. 83-670, 98 FCC 2d 1076 (1984) ("1984 Television Deregulation Order"). Based on marketplace changes, the Commission abolished commercial time limits for radio in 1981. Report and Order, MM Docket No. 79-219, 84 FCC 2d 968 (1981) ("Radio Deregulation Order").

[6] "[T]he fact that viewers will not watch and advertisers will not buy time if too many commercials are presented ... adequately protects the public interest in this context." Memorandum Opinion and Order on reconsideration, MM 83-670, 104 FCC 2d 358, 370 (1986).

[7] 1984 Television Deregulation Order at p. 1104.

Of course, that future is now here. It was described in great detail in a comprehensive June 1991 staff report[8], which in turn recently inspired the Commission to make various structural proposals aimed at "lessening the regulatory burden on television broadcasters as they seek to adapt to the multichannel marketplace."[9]

Given the radical and continuing changes in the competitive environment facing free over-the-air broadcasters -- and given the fact that, in other contexts, the Commission is properly moving to interpret its regulatory mandate in light of that new environment -- CBS believes it incongruous for the Commission to be considering the resurrection of commercial limits which would hobble the only video marketplace competitor that is dependent on advertising revenues not only for its prosperity, but for its survival.

Thus, CBS's response to the Notice's fundamental question is that the Commission should not "reexamine the basic assumptions" of the 1984 Television Deregulation

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[8] F. Setzer and J. Levy, Broadcast Television in a Multichannel Marketplace, FCC Office of Plans and Policy Working Paper No. 26, 6 FCC Rcd 3996 (1991) ("OPP Report").

[9] Notice of Proposed Rulemaking, FCC 92-209, MM Docket No. 91-221, 7 FCC Rcd 4111 (1992) ("1992 Television Deregulation Notice").

Order. (Notice at ¶6) Those assumptions were based on current and then-projected marketplace realities which are incontestable and which have been repeatedly acknowledged by the Commission. In the OPP Report, the Commission has all the marketplace data it needs to satisfy itself that competition between broadcasters and their multichannel competitors for audiences and advertisers is increasingly intense.

Commercial time limits in general simply have no place in such an environment. Nor should the Commission reconsider its rescission of its program-length commercial policy in its 1984 Television Deregulation Order. "Infomercials", which provide a mechanism for advertisers to provide more information about their products than do traditional spot announcements, are precisely the kind of "innovative and detailed commercials" which were contemplated in the 1984 proceeding.

The appeal of these long-form messages to new advertisers and, increasingly, to traditional advertisers as a supplementary sales vehicle has been beneficial to broadcasters, as well as to cable programmers. The same marketplace forces which discipline the advertising market in general undoubtedly apply to the special case of

infomercials. That is, their ultimate prevalence will be limited by audience preferences and by the desire of advertisers to sell their products in an uncluttered broadcast environment.[10]

Finally, the Commission acknowledged in the Notice that the U.S. Supreme Court has recently cautioned that government regulations "should not place too much importance on the distinction between commercial and noncommercial speech."[11] CBS urges that commercial time limitations, whether in the form of rules, processing guidelines, or special restrictions on long-form commercial messages, clearly constitute program content regulation to which the Supreme Court's admonition applies with full force. The constitutional implications of reregulation in this area present an independent ground for the Commission to refrain from further action, especially in light of the compelling arguments that a problem justifying Commission action does not exist.

In a separate statement accompanying the 1992

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[10] See footnote 7, infra. See also, Office of the United Church of Christ v. FCC, 707 F.2d 1413, 1438 (D.C. Cir. 1983), affirming the Radio Deregulation Order.

[11] City of Cincinnati v. Discovery Network, Inc., No. 91-1200, slip op. at 14 (March 24, 1993).

Television Deregulation Notice, Commissioner Duggan stated his belief that "the FCC should do all that it can to help free, over-the-air television broadcasters compete against multichannel video providers with a dual revenue stream." Reregulation which would again limit broadcasters' flexibility to adapt their advertising practices to the current marketplace environment would be utterly inconsistent with that goal and should not be pursued.

Respectfully submitted,

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December 20, 1993